resorted to in the instant case, that which it would not be permitted to do directly.

"State *v.* Kimes, 152 Iowa, 240, 132 N. W. 180, cited by counsel for appellee, does not justify the proceedings had in the instant case. In said case we said:

" 'While the rule is that in rebutting evidence of good moral character offered by defendant the state cannot introduce evidence as to particular transactions, it is certainly competent on cross-examination of a witness who has testified as to defendant's good moral character to ask whether there have not been rumors or reports in the community as to his bad character with reference to particular transactions.' "

"We do not intend to depart from the rule thus announced, but in the instant case the county attorney went much farther in cross-examination than could be allowed under this rule, and supplemented this by argument highly prejudicial and exceedingly improper. We are disposed to allow a wide latitude in the arguments of counsel, realizing the native ability of the average juror to make due allowance for oratorical embellishment and histrionic display, but we cannot tolerate abuse of the properties of argument and permit counsel to go unleashed into the fields of denunciation and accusation to secure conviction of one charged with crime."

New Mexico Statute Held Violative of Right of Free Speech.—The New Mexico Statute, chapter 140, Laws 1919, provides as follows:

"Section 1. That it shall be unlawful for any person or persons, firm or corporation, to commit or perform or to cause to permit or to be performed any act of any kind whatsoever which has for its purpose or aim the destruction of organized government, federal, state or municipal, or to do or cause to be done any act which is antagonistic to or in opposition to such organized government, or incite or attempt to incite revolution or opposition to such organized government.

"Any person violating any of the provisions of this act shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the state penitentiary for not less than one year nor more than ten years, or by both such fine and imprisonment, in the discretion of the court.

"Section 2. It shall be unlawful for any person or persons, firm or corporation to advocate or teach, or cause to be advocated or taught, in any manner whatsoever, the doing or performance of any of the acts prohibited by section 1 hereof."

In State *v.* Diamond, 202 Pac. 988, the Supreme Court of New Mexico held that this act was unconstitutional as violative of the right of free speech guaranteed by section 17 of article 2 of the state Constitution.

The court said in part.

"In State *v.* Tachin, 92 N. J. Law, 270, 106 Atl. 145, the New Jersey

court had before it a somewhat similar question to the one at bar. The statute of New Jersey (P. L. 1918, p. 130), provided in section 1 of the act punishment for inciting, or, by writing, speech, or other means, attempting to incite, 'insurrection or sedition.' Section 2 of the act provided that—

" 'Any person who shall advocate, in public or private, by speech, writing, printing, or by any other means, the subversion or destruction by force of the government of the United States, or of the state of New Jersey, or attempt by speech, writing, printing, or in any other way whatsoever to incite or abet, promote or encourage hostility or opposition to the government of the United States, or the state of New Jersey, shall be guilty,' etc.

"Section 3 of the act prohibited membership in any society formed for the purpose of inciting, abetting, promoting, or encouraging hostility or opposition to the government of the United States, or of the state of New Jersey.

"In the case before the court the defendant was charged with a violation of section 3 of the act by reason of a speech in which it was urged he attempted to incite hostility and opposition to the government of the United States. The section was challenged as unconstitutional upon the ground that it invaded the constitutional guaranty of the right of free speech. The majority of the court construed the section to the effect that the words 'hostility or opposition to the government of the United States, or of the state of New Jersey,' meant such hostility and opposition as involved the 'subversion or destruction by force' of those governments, and held that the statute, as thus construed, was constitutional. The court states, however, that if the statute punished hostility or opposition to the government without force, the statute would be unconstitutional. Two vigorous dissents were filed in this case, which are reported in 93 N. J. Law, 485, 108 Atl. 318. In one of these opinions sections 2 and 3 of the act are condemned on the ground that they violate the right of free speech, the freedom of the press, and the freedom of assembly guaranteed by the federal Constitution and the Constitution of New Jersey. Sections 2 and 3 of this same act came before the New Jersey court again in State *v.* Gabriel, 112 Atl. 611. The court adhered to the former construction of section 2 of the act, but held section 3 to be unconstitutional, and said:

" 'At the close of the trial counsel for defendant moved that the court direct that the defendant be acquitted of this indictment, because the statute upon which it rested is unconstitutional, and this we think is sound. Under the Constitution and Bill of Rights the Legislature cannot make it criminal to belong to a party organized or formed for the purpose of encouraging hostility or opposition to the government of the United States or of this state, unless the hostility or opposition includes a purpose to overthrow or subvert such government. The Constitutionality of the second section of the act was sus-

tained in State *v.* Tachin, 92 N. J. Law, 269, 106 Atl. 145, because that section provides that the hostility or opposition prohibited involved subversion and destruction by force. While by the section under consideration it is made a crime to be a member of a society organized or formed for the purpose of encouraging hostility or opposition to the federal or state government, not to subvert or destroy them by force, and would apply to any citizen who sought a change in the form of government by a most peaceful means. * * * In our judgment so long as an organization formed for the purpose reserved in the paragraph of the constitution referred to confines its purpose to peaceful hostility or opposition and does not advocate or indicate a purpose to overthrow or subvert the existing government by force, but only by constitutional methods, the right of the members of such society to assemble together and consult for the common good is protected by the bill of rights.'

"In Iowa they have an act very similar to the New Jersey Act. and which is chapter 372, Laws 1917. Section 1 prohibits the inciting of 'insurrection or sedition.' Section 2 of the act prohibits the advocacy by speech, writing, printing, or other means of the subversion and destruction by force of the government of the State of Iowa or of the United States, or the attempt by speech, writing, printing, or other means to incite or abet, promote or encourage hostility or opposition to the government of the state of Iowa or of the United States. Section 3 of the act prohibits membership in any organization or society organized for the purpose of inciting, abetting, promoting, or encouraging hostility or opposition to the government of the state of Iowa or of the United States. This statute came before the Supreme Court of Iowa in State *v.* Gibson, 174 N. W. 34. The defendant was charged that—

"He 'did attempt by speech, action, and manner of speaking to incite, abet, promote, and encourage hostility and opposition to the government of the state of Iowa and of the United States, contrary to the statutes in such case made and provided,' etc.

"The indictment evidently was brought under section 2 of the act and was sustained by the court upon that ground that it charged an attempt to promote sedition. If the construction of the statute by the court was intended to mean that the hostility and opposition to the government was hostility and opposition by force, the opinion of the court is no doubt correct. The court said:

" 'It is presented that the statute violates the guaranty of article 1, sec. 7, of the Constitution of the state that all may speak, write, and publish their sentiments on all subjects, being responsible for the abuse of that right, and that no law shall be passed to restrain or abridge the liberty of speech or of the press. The constitutional guaranty itself qualifies the immunity by a plain indication that, while the right is given, the abuse of that right is not to be tolerated. The framers of the Constitution were laboring for the good of the com-

monwealth. They did not intend to protect what might destroy the state. It was not intended that the right of free speech included the right to promote sedition.'

"If our interpretation of our statute is correct, as no doubt it is, the whole statute is unconstitutional upon the same reasoning as that adopted by the New Jersey court in regard to section 3 of their act. It is true that section 3 of that act violated the right of assembly, but the principles governing the right of assembly and the right of free speech are the same."

When Obstruction of Coal Mining Is a Restraint of Interstate Commerce.—In United Mine Workers of America *v.* Coronado Coal Co., 42 Sup. Ct. Rep. 570, the Supreme Court of the United States held that coal mining is not interstate commerce, and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of such commerce, unless the obstruction is intended to restrain commerce, or has necessarily such a direct material substantial effect to restrain it that the intent reasonably must be inferred.

Mr. Chief Justice Taft in delivering the opinion of the court said in part:

"This case is very different from Loewe *v.* Lawlor, 208 U. S. 274, 28. Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815. There the gist of the charge held to be a violation of the Anti-Trust Act was the effort of the defendants, members of a trades union, by a boycott against a manufacturer of hats, to destroy his interstate sales in hats. The direct object of attack was interstate commerce.

"So, too, it differs from Eastern States Retail Lumber Dealers' Association *v.* United States, 234 U. S. 600, 34 Sup. Ct. 951, 58 L. Ed. 1490, L. R. A. 1915A, 788, where the interstate retail trade of wholesale lumber men with consumers was restrained by a combination of retail dealers by an agreement among the latter to blacklist or boycott any wholesaler engaged in such retail trade. It was the commerce itself which was the object of the conspiracy. In United States *v.* Patten, 226 U. S. 525, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (N. S.) 325, running a corner in cotton in New York City, by which the defendants were conspiring to obtain control of the available supply and to enhance the price to all buyers in every market of the country, was held to be a conspiracy to restrain interstate trade, because cotton was the subject of interstate trade, and such control would directly and materially impede and burden the due course of trade among the states, and inflict upon the public the injuries which the Anti-Trust Act was designed to prevent. Although running the corner was not interstate commerce, the necessary effect of the control of the available supply would be to obstruct and restrain interstate commerce, and so the conspirators were charged with the in-